

REMARKS

Applicant respectfully requests continued examination of the present application, pursuant to and consistent with 37 C.F.R. § 1.114, and in light of the remarks which follow.

Claims 1-10 and 23-27 are pending. Claims 4-10 and 23-25 are amended. Basis for these amendments may be found in the claims and specification as-filed, including claim 1 as filed. Claims 1-3, 11-22, and 26-27 are canceled herein without prejudice or disclaimer thereto. Applicants reserve the right to file at least one continuation application directed to any subject matter canceled herein.

The specification is amended herein to include subject matter from WO 00/01730, as presently incorporated by reference on page 10 of the English language specification as filed. This material may specifically be found in the disclosure of WO 00/01730 at page 4, line 34 to page 5, line 23. WO 00/01730 was previously incorporated by reference in its entirety. Thus, this material being inserted into the present specification is material previously incorporated by reference; this amendment contains no new matter. A sequence listing, as appropriate, will be provided in a separate submission.

Rejections Under 35 U.S.C. § 102

Claims 1-10 and 23-28 stand rejected under 35 U.S.C. 102(e) as anticipated by Ruben et al. (U.S. Publication No. 2002/0072596)("Ruben").

First Applicant notes that claims 1-3, 11-22 and 26-27 are canceled herein without prejudice or disclaimer and thus this rejection with respect to those claims is moot. Claim 23 is amended to appear in independent form accordingly.

To anticipate a claimed invention under 35 U.S.C. § 102, a reference must teach each and every element of the claimed invention. See *Lindeman Maschinenfabrik GmbH v. American Hoist and Derrick Company*, 221 USPQ 481, 485 (Fed. Cir. 1984). Applicant submits that Ruben does not disclose each element of the present invention.

The Office has indicated that the subject matter incorporated by reference from WO 00/01730 must be placed into the present specification. Accordingly, the present specification is amended to recite the subject matter found on page 4, line

34 to page 5, line 23 of WO 00/01730. Thus, the present specification provides the relevant definition of a peptide derived from lactoferrin.

To this end, claim 23 is amended to appear as an independent claim incorporating the subject matter of base claim 1, and is amended to recite that the peptides derived from lactoferrin are those found at amino acid 12 to amino acid 40 of human lactoferrin.

As previously noted, Ruben does not disclose peptides derived from amino acid 12 to amino acid 40 of human lactoferrin. Ruben further distinguishes between polypeptides and polypeptide fragments. Thus, Ruben does not disclose the peptide derivatives recited by the present claims.

Applicant requests that the rejections under 35 U.S.C. § 102 be withdrawn.

CONCLUSION

It is respectfully submitted that all rejections have been overcome by the above amendments. Thus, a Notice of Allowance is respectfully requested.


In the event that there are any questions relating to this amendment or the application in general, it would be appreciated if the Examiner would contact the undersigned attorney by telephone at (703) 836-6620 so that prosecution of the application may be expedited.

Respectfully submitted,

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